

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DERRICK HAMILTON, \* Case No. 15-CV-4574 (CBA)  
\*  
Plaintiff, \* Brooklyn, New York  
\* April 19, 2016  
\*  
v. \*  
\*  
CITY OF NEW YORK, et al., \*  
\*  
Defendants. \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE VERA M. SCANLON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JONATHAN ISIDOR EDELSTEIN, ESQ.  
Edelstein and Grossman  
271 Madison Avenue  
New York, NY 10016

For the Defendant, JEFFREY LOPERFIDO, ESQ.  
New York City Police Dept.: ANGHARAD K. WILSON, ESQ.  
New York City Law Department  
Special Federal Litigation  
Division  
100 Church Street  
Room 3-197  
New York, NY 10007

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

## APPEARANCES: (Cont'd.)

For the Defendant,  
Det. Louis Scarcella:

RICHARD ERNEST SIGNORELLI, ESQ.  
Law Office of Richard E.  
Signorelli  
799 Broadway, Suite 539  
New York, NY 10003

BRIAN HA, ESQ.  
405 Tarrytown Road, #1244  
White Plains, NY 10607

For the Defendant,  
Police Officer Billy White:

SCOTT MICHAEL KARSTEN, ESQ.  
Karsten & Tallberg, LLC  
500 Enterprise Drive, Suite 4B  
Rocky Hill, CT 06067

1 (Proceedings commenced at 12:02 p.m.)

2 THE COURT: This is Judge Scanlon. Thanks for  
3 holding. So we're on the line for a telephone conference in  
4 Hamilton vs. The City of New York, 15-CV-4574.

5 If we could start with plaintiff's counsel's  
6 appearance first.

7 MR. EDELSTEIN: Jonathan Edelstein for the  
8 plaintiff. Good morning, Your Honor.

9 THE COURT: Good morning. And then for Defendant  
10 Scarcella.

11 MR. SIGNORELLI: Richard Signorelli and Brian Ha.  
12 Good morning, Your Honor.

13 THE COURT: Good morning. All right.

14 MR. LOPERFIDO: For the New York City defendants,  
15 you have Jeff Loperfido and Angharad Wilson.

16 THE COURT: Okay.

17 MR. KARSTEN: And for the City of New Haven  
18 defendants you have Scott Karsten. Good morning, Your Honor.

19 THE COURT: Good morning. Okay. We've got  
20 everybody. All right. So we're picking up from discovery  
21 from the other day. Any progress on any of these issues  
22 between and among yourselves?

23 MR. SIGNORELLI: Your Honor, this is Richard  
24 Signorelli on behalf of Detective Scarcella.

25 If I may, I'd like to briefly address an item in

1                   your prior order regarding the index type documents.

2                   Again, I'm at a limitation, which I hope is  
3 temporary, in that I have not seen any of these documents. So  
4 I'm not aware of their content. So I could only speak  
5 generally.

6                   But our position is that to the extent certain  
7 underlying information concerning his disciplinary record, if  
8 any, personnel related files, to the extent any of that is not  
9 otherwise discoverable, either because of staleness or not  
10 being related enough to the allegations in this particular  
11 case, the same principles should apply to summary type  
12 information for those items.

13                  And we would like -- you know, very simply, we don't  
14 want to make the decision as to what the plaintiff should get  
15 or not and -- but we would like the opportunity before these  
16 things are ordered to be turned over wholesale to the  
17 plaintiff's counsel, we would like the opportunity of arguing  
18 to Your Honor that certain items, if any, should not be  
19 disclosed for those two reasons, whether summary items or the  
20 underlying information relating to the summary items. And  
21 that could also involve an in camera inspection as well.

22                  And this is something that we respectfully believe  
23 is very important in order to allow plaintiff access to  
24 everything their entitled to under the law, but no more than  
25 that.

1                   THE COURT: All right. For the --

2                   MR. SIGNORELLI: And that would be item three in  
3 your prior order, Your Honor.

4                   THE COURT: Right. Plaintiff's argument.

5                   MR. EDELSTEIN: Your Honor, Jonathan Edelstein for  
6 the plaintiff. This was discussed at last week's conference  
7 and the court ruled, and I would submit properly, that there's  
8 not going to be a preliminary stage of review of the summary  
9 or indexed documents.

10                  And first of all, this is proper because there's a  
11 confidentiality stipulation in effect in this case and,  
12 therefore, there's no risk that information in these indexed  
13 documents are going to be disseminated beyond the circle of  
14 counsel and their clients.

15                  And second of all, these index documents, from what  
16 I understand, essentially are indexes. They don't contain  
17 detailed information. They basically identify what the  
18 documents in the file are.

19                  And I don't think there is anything about that that  
20 would go beyond what the plaintiff is entitled to receive.

21                  Certainly, when it comes to whether the particular  
22 underlying documents that are listed on the index should be  
23 disclosed, some of those things the plaintiff might not want.  
24 Others of those things may become subject of litigation, but I  
25 don't see any reason for this to apply to indexes themselves

1 and I don't think there's any reason for the further delay in  
2 discovery that would be required if we're going to argue over  
3 the index before there's even any disclosure as to what  
4 documents are in these files. I think it's an unnecessary and  
5 wasteful layer of review.

6 MR. SIGNORELLI: Just a brief reply, Your Honor.  
7 This is not a matter of information going beyond the case and  
8 I would hope plaintiff's counsel would not be disseminating  
9 information outside this lawsuit. This is a matter of what is  
10 the plaintiff entitled to receive and not entitled to receive  
11 under the law in this district with regard to these matters.

12 And if the matters are old or unrelated, they're not  
13 entitled to this information within the confines of this  
14 lawsuit and that's our position.

15 And again, we're not asking Your Honor to give us  
16 permission to choose ourselves. We're asking for the ability  
17 to argue the point before Your Honor, including an in camera  
18 review of the documents so this is done properly, so that  
19 plaintiff gets what they're entitled to and so that the  
20 defendant's rights are also protected here.

21 And we don't want the plaintiff to receive things  
22 that they're not entitled to received here.

23 THE COURT: All right. Look. The motion for  
24 reconsideration, which is how I'm going to view this, is  
25 denied.

1                   We're talking about CCRB files, IAB files, other  
2 similar types of indices. And we already got to the point  
3 that you're trying to make that there might be underlying  
4 personal information, a carve out for the personal records and  
5 you're going to be allowed to look at them and we'll see where  
6 it goes. If you have some objection, you can raise it before  
7 they're turned over.

8                   But all of these documents it would appear to relate  
9 to the defendant's conduct in their professional capacity as  
10 employees of the New York City Police Department. I understand  
11 there's the DOE issue, but it's completely possible that all  
12 of this material is relevant to the many, many issues that  
13 come up in this case.

14                  And this case is more complicated than your more run  
15 of the mill 1983 case there. And that's not to diminish those  
16 folks -- you know, other plaintiff's claims.

17                  It's just that they're simpler to administer the  
18 litigation in cases that don't spend this kind of time. That  
19 do not have claims that the defendant engaged in a history and  
20 a pattern of unlawful conduct and the point that was made last  
21 time well, look. They're looking for material that comes  
22 after the point in time when the alleged violations happened  
23 in this case. And there's argument about whether the  
24 violations continued after date certain that the defendants  
25 were arguing for.

1                   But it's certainly possible that these materials  
2 include information that would be fair game for impeachment,  
3 for other lines of investigation and we already -- let me step  
4 back.

5                   I don't necessarily think that any of this is  
6 confidential or at least something that the plaintiff should  
7 be precluded from seeing because this is the history of  
8 someone's employment as an officer of with the police  
9 department.

10                  And they had -- that person, each of the defendants  
11 had obligations that they should have abided by, maybe they  
12 did, maybe they didn't. I know we're dealing with New Haven  
13 as well, but you know, the same general principles apply.

14                  So the protection that the defendants are seeking,  
15 which is that you don't dig too deeply into things that maybe  
16 the -- sorry. The defendant will be able to make an argument  
17 about relevance because of timing, you're already getting that  
18 protection by looking at the indices first.

19                  And whether you're even entitled to it I think is an  
20 open question, but we don't need to answer it because we can  
21 start with the indices. Try to make this a practical exercise  
22 by knowing what the complaints are about.

23                  I just don't know enough about who complained about  
24 these officers, what was investigated, which body looked into  
25 it and maybe each of the defendants would know the individual

1 situation. I don't know how much the plaintiff knows.

2 But this is fair game. It's absolutely potentially  
3 relevant and the point of looking at the indices is less about  
4 thinking that really there is any privacy here and more about  
5 thinking how do we make this something manageable for  
6 everybody.

7 So that's not to preclude you from making arguments  
8 about privacy or relevance, but the federal rules, they're  
9 very broad. There's certainly a need to make this practical.

10 There is the, I suppose, re-emphasis on  
11 proportionality in the restructuring of the federal rules that  
12 happened late last year, but I think that this is absolutely  
13 something that plaintiff is at least entitled to know what the  
14 lay of the land is and go from there.

15 So these indices need to be produced. Then you can  
16 have your respective conversations about what is actually in  
17 the materials and then if you can work it out, great. And if  
18 you can't, come back to me and let me know as to the  
19 particular materials, why you think they shouldn't be  
20 produced. But I'm absolutely not going to change what  
21 happened last week. So --

22 MR. SIGNORELLI: Your Honor, are you ordering the  
23 production of these files without giving us an opportunity to  
24 present them for an in camera review first?

25 THE COURT: I'm not getting an in camera review.

1 What we talked about last week and what I decided, I'm going  
2 to read it. "Defendants are to provide all index type  
3 documents as to personnel file, CPI, CCRB, IAV and/or similar  
4 files.

5 Counsel are to review the documents produced and  
6 confer as to whether and if the underlying documents should be  
7 produced.

8 As to the defendant's personnel file, defendant's  
9 counsel may make an initial review to produce redactions of  
10 personal family" -- it should have said information. "Counsel  
11 should consult as to the information to be redacted. As to  
12 personal information, the productions is to be completed by  
13 5/13/16." These indices need to produced.

14 Now if they have Social Security numbers, they have  
15 telephone numbers that are not relevant, then the cities can  
16 take out that information but there's no review on the  
17 indices. They're producing it.

18 You can designate it as confidential if you think it  
19 satisfies the confidentiality agreement that you have. You  
20 know, I'm not taking a position on that, but we can't even  
21 have a meaningful conversation about this without the  
22 plaintiff having some idea of what the files are.

1                   The only question is whether it's relevant,  
2                   potentially given the span of this case. Maybe some things at  
3                   certain periods of time would not be relevant and so it's not  
4                   worth the effort. It would be disproportionate to the effort  
5                   required to have to go and track down these old files or the  
6                   more recent files.

7                   But you've got to produce these indices so we can  
8                   move onto the substantive question of what files need to be  
9                   produced.

10                  So picking up on what we were talking about last  
11                  week. I think we -- this is looking at the letter that's filed  
12                  on April 7th.

13                  MR. LOPERFIDO: Your Honor, if you don't mind me  
14                  interrupting. This is Jeff Loperfido from the City.

15                  THE COURT: Yes.

16                  MR. LOPERFIDO: At our last call Mr. Edelstein had  
17                  prior to the call proposed a potential solution to the tax  
18                  authorization issue and we, the City, have considered that and  
19                  I informed him earlier this morning that it was not a workable  
20                  solution.

21                  So we wanted to present that issue to you now either  
22                  now or at the end, whenever you deem is fit.

23                  THE COURT: All right. So let's start with -- it's  
24                  your motion. Defendant's want the tax return so let's hear  
25                  from you, then hear from plaintiff. So you want the tax

1           returns and the IRS authorizations, right? So --

2           MR. LOPERFIDO: Correct.

3           THE COURT: So what do you want?

4           MR. LOPERFIDO: So with regards to tax  
5           authorizations we have requested -- or the returns themselves,  
6           we've requested materials five years prior to the incident and  
7           going through his time in custody.

8           If we were forced to prioritize, we'd be seeking  
9           information prior to the arrest and the reasoning here is that  
10           plaintiff has indicated in the response to discovery request  
11           and elsewhere that they will be pursuing economic damages in  
12           the form of lost earnings.

13           Lost earnings, the way that lost earnings are often  
14           calculated is by looking at prior earnings, education, age and  
15           then through the use of an expert, usually vocational  
16           economists. They will make some calculations based on  
17           different points of data and extrapolate the type of income  
18           that was lost during the time of incarceration.

19           I recently did this in the *Fernando Bernitez* matter  
20           in the Southern District and with regards to the vocational  
21           economists this is a source of information that they look to  
22           to make these calculations based on reason and substance.

23           The objection that plaintiff has raised with regard  
24           to the relevance and the compelling need, now with regard to  
25           relevance, I think they are clearly relevant as to the lost

1       earnings issue and I think they also speak to some of the  
2       other issues, which I'll get to in a moment.

3               With regard to need, plaintiff's counsel has  
4       indicated that Mr. Hamilton does not have records from that  
5       time, not surprisingly. I doubt many of us do.

6               And add to the compelling need prong of the test for  
7       the production of executed tax authorizations, if the  
8       material's not available elsewhere, that can create compelling  
9       need.

10               So with regard to relevance, again, we have the lost  
11       earnings. The Second Circuit recently in a 2015 opinion  
12       commented on the appropriateness of looking to past earnings  
13       for calculating future lost earnings. So I think relevance is  
14       met there.

15               But it also speaks to both the alibi that Mr.  
16       Hamilton is purporting in this case and to his credibility.

17               He has testified in his 50(h) testimony in this case  
18       that he was employed prior to his incarceration. He was  
19       employed at a gas station at one point in time. He was  
20       employed as a car garage attendant at another point in time.  
21       He claims to have worked 40 hours a week. He says he was  
22       paid in cash.

23               So perhaps that's true. We should have the ability  
24       to authenticate that with the IRS and if he was paid in cash  
25       and he didn't file his taxes, I think that speaks to

1 credibility as well.

2 There's also the issue of his existence in the New  
3 Haven area after the alleged -- after the murder of Nathaniel  
4 Cash in this case.

5 Mr. Hamilton was on parole due to a prior  
6 manslaughter conviction. He was likely in violation of his  
7 parole while being in Connecticut, but he claims that he was  
8 starting a business, a hair salon, in Connecticut and  
9 presumably there would be records about his ability to have  
10 taken investment into the company, hired employees. He could  
11 -- I know there -- her suggestions and it's going to be his  
12 testimony that the business failed because of his arrest.

13 All of that goes to the issue that we shouldn't have  
14 to take his word that he either didn't make any income or  
15 never submitted his taxes, or whatever else he might want to  
16 stipulate to.

17 We should be permitted to keep those authorizations  
18 from the IRS, have a final and conclusive and authentic answer  
19 and then go from there.

20 THE COURT: What's the issue about the alibi? I  
21 don't understand, from what you said, how that tax returns  
22 would be relevant to that.

23 MR. LOPERFIDO: He claims that he was starting a --  
24 he was a co-owner of a hair salon in the New Haven area. He  
25 was arrested at the hair salon in this case, in March, about

1 three months after the homicide in this matter.

2 And he claims that the matter failed because he was  
3 arrested and he was, you know, co-owner and pulled from that  
4 property, pulled from that business.

5 So I think to the extent -- giving him a proper  
6 reason to be in New Haven as opposed to being in New Haven  
7 because he had committed a crime and was trying to escape  
8 prosecution I think it speaks to the issue of whether this  
9 business existed, what stage it was in. Whether there was any  
10 government submissions that would substantiate the idea that  
11 he was in this business.

12 And again, it speaks to alibi, but it also speaks to  
13 any claimed loss of income, if that is going to be a source of  
14 a 8.2 as something that went array due to his arrest.

15 THE COURT: All right. For plaintiff.

16 MR. EDELSTEIN: Okay. Your Honor, first of all, I  
17 would note that the City's argument has been directed to pre-  
18 incarceration tax information, rather than post-release tax  
19 information.

20 And I don't believe counsel has really spoken to the  
21 relevance of the post-release tax returns that they've  
22 demanded, and I would submit that they're not really relevant,  
23 because they're occurring after Mr. Hamilton's life took a  
24 very different turn from what it would have taken if not for  
25 his arrest here.

1                   And I don't think they're really that indicative of  
2 what career path he would have taken or what he would have  
3 learned, or what he would have earned, that is, but for the  
4 arrest.

5                   Now going to the pre-incarceration tax information,  
6 we have offered to stipulate that Mr. Hamilton did not file  
7 taxes prior to his incarceration because as he testified  
8 during the 50(h) hearing, you know, he did have a job in  
9 Brooklyn but it was off the books.

10                  And the City could certainly make whatever  
11 credibility arguments it seeks to make from that. It would  
12 have a stipulation that he worked, but didn't file taxes and  
13 it could make any credibility arguments to the jury on that  
14 basis.

15                  And I would submit also that in terms of the  
16 business in New Haven, which really was just getting off the  
17 ground at the time of his arrest. I mean, on the date of his  
18 arrest I believe his testimony at the 50(h) was that some  
19 people were in there fixing up the store, you know, getting it  
20 ready to be opened still. I could be wrong about that. I'm  
21 sure counsel will correct me if I am.

22                  But also I would submit that Mr. Hamilton testified  
23 about who is co-owner was on the business, Alphonso Dixon, and  
24 certainly the City could request from New Haven any business  
25 license applications, permits, things like that, that were

1                   filed either by Mr. Hamilton or Mr. Dixon during this relevant  
2                   period.

3                   And if it finds that there were none, it can make  
4                   whatever arguments are to be made from that. If it finds that  
5                   permits did exist, it can explore that issue further.

6                   I would submit that tax information is not really  
7                   needed for this purpose and that, in fact, given that the  
8                   store either was just opening or hadn't opened, that tax  
9                   returns would be very little relevance and not informative.

10                  THE COURT: So that --

11                  MR. EDELSTEIN: With that said, I will abide by --  
12                  you know, the plaintiff will abide by whatever ruling was made  
13                  by the court.

14                  THE COURT: So is your client seeking lost income  
15                  for a period of what? From his arrest forward to the present  
16                  lost income? Is that what he's looking -- is that what he  
17                  wants?

18                  MR. EDELSTEIN: That's what he wants.

19                  THE COURT: Then you have to provide the IRS  
20                  authorizations for three years prior to his arrest, which  
21                  would give the defendants a baseline through the present. All  
22                  right.

23                  Next issue. We should do it let's say in the next  
24                  ten days.

25                  MR. EDELSTEIN: Okay. Within the next ten days IRS

1 authorizations for three years prior -- beginning three years  
2 prior to the arrest through to the present.

3 THE COURT: Yes.

4 MR. EDELSTEIN: Is that a correct summation of the  
5 ruling?

6 THE COURT: Yes. Okay.

7 All right. Which issue would you like to deal with  
8 next?

9 MR. LOPERFIDO: The phone cut out. I didn't hear  
10 Your Honor's response to Mr. Edelstein. Was that an accurate  
11 --

12 THE COURT: Yes.

13 MR. LOPERFIDO: -- summary of the --

14 THE COURT: Yes. Three years prior to the arrest  
15 through the present he's to provide the authorization for the  
16 IRS records within the next ten days.

17 MR. EDELSTEIN: Okay. I guess, Your Honor, that the  
18 next issue is the one below the -- bullet point below the  
19 personnel files, which is our request for the files concerning  
20 criminal cases that involved Detective Scarcella and in which  
21 exonerations have occurred.

22 We're aware that as many as 70 cases may be under  
23 review. We're not asking for all of those files. We're only  
24 asking for the ones where there have been exonerations. We're  
25 willing to provide a list and we would also be willing to

1       limit our request for documents in those cases to those that  
2       actually relate to Detective Scarcella.

3               And we submit that the relevance of this is very  
4       similar to the relevance of the personnel files, which is that  
5       these are cases which involved allegations of misconduct  
6       against Detective Scarcella. These are cases in which  
7       exonerations have occurred. So therefore, the allegations  
8       would presumably be substantial.

9               These are also cases most of which bracket the time  
10      period involved in this case, starting a few years prior to  
11      Mr. Hamilton's arrest and going, I believe the most recent of  
12      the exonerations involved the prosecution a few years after.

13               And that moreover these cases -- you know, because  
14      the allegations against Detective Scarcella surfaced after his  
15      retirement from the NYPD, we believe that they might not be  
16      reflected in the personnel files, therefore, would not be  
17      duplicative or redundant of the personnel files and this is  
18      information that we believe to be relevant and to which we are  
19      entitled.

20               I know that the City has raised the issue of whether  
21      any of the files are sealed and if so, would that require an  
22      authorization from the defendants involved.

23               We can certainly undertake to obtain such  
24      authorizations. I don't believe it will be a great deal of  
25      trouble to do so.

1                   And I believe also that the sealing would apply only  
2                   to the court file and not to any internal files that the Kings  
3                   D.A. or that the NYPD might have.

4                   And that for those reasons I would respectfully  
5                   submit that the courts order these files to be disclosed.

6                   THE COURT: So let me ask you, what exactly are you  
7                   looking for? I mean, first, how many exonerations have there  
8                   been?

9                   MR. EDELSTEIN: I believe at the moment -- it's a  
10                   moving a target but I believe that the moment there have been  
11                   nine.

12                   THE COURT: Okay. And are you looking for the full  
13                   underlying file.

14                   Are you looking -- I understand you're saying you  
15                   just want Defendants Scarella's information, but are you  
16                   looking for the file? Are you looking for the exoneration  
17                   report? Are you looking for the materials that support the  
18                   exoneration report? What is it that you really want from  
19                   this?

20                   MR. EDELSTEIN: What we really want primarily is the  
21                   exoneration report and the materials that support the  
22                   exoneration report, specifically those that relate to the  
23                   investigation of the alleged acts of Detective Scarella.

24                   THE COURT: Have these been released or I don't know  
25                   what's happened? Were they exchanged in other cases?

1                   MR. LOPERFIDO: I can speak to that and the answer  
2 is no.

3                   These -- what has happened in the past is there is a  
4 report, and we can all refer to the report that was produced  
5 in this matter with regard to Mr. Hamilton. And then there is  
6 some sort of statement usually.

7                   And this statement -- this case heard at a court  
8 proceeding I think Mr. Edelstein was actually present at,  
9 explaining the basis for the recommendation that in Hamilton's  
10 case that his conviction be overturned.

11                  These materials are not public. They are sealed  
12 pursuant to state statute. In both the underlying materials,  
13 the underlying criminal court file, the NYPD document, the  
14 D.A. file. I've done some research in this area. I have never  
15 seen a court order an unsealing -- make an unsealing order for  
16 propensity evidence.

17                  I've seen it in the context where a named defendant  
18 has a criminal conviction that was sealed as a defendant the  
19 plaintiff was pursuing those records and the court felt  
20 because it related to the same activity that the 1983  
21 litigation pertained to, that it was a relevant area of  
22 discovery.

23                  I've seen it in a class cert context, but I've not  
24 seen a federal court balancing the important privacy interests  
25 and strong policy autonomy between state and federal

1       sovereignies with regard to a state privilege to order the  
2       unsealing of records that pertain to nobody in the case  
3       without -- so perhaps that issue could be set aside if Mr.  
4       Edelstein can chase down some of these other individuals who  
5       have had their convictions overturned.

6               But with regard to the one -- with regard to these  
7       matters being sealed pursuant to state law, that sort of is an  
8       issue that we'd have to deal with at a (indiscernible).

9               THE COURT: So your only objection is that there's a  
10       160.50 sealing to the underlying facts.

11               MR. LOPERFIDO: No, not at all.

12               THE COURT: So what's -- all right. Look. There's  
13       plenty of cases in which the federal court says that the state  
14       court privilege doesn't trump the federal discovery rules.

15               So yes, it's correct. If the individuals are willing  
16       to sign 160.50 releases, then that issue could be mooted out.

17               So what, if any, other objections do you have?

18               MR. LOPERFIDO: Sure. Let me start at the top.

19               And I want to draw a distinction from an argument  
20       that was made at the last conference.

21               You made the argument that the IAB, the CCRB, the  
22       CTI with no limitations, meaning through present day for these  
23       individuals who had worked at NYPD or at the D.A. up until  
24       2000 that seeking material from that live ray of time and  
25       scope suggests that plaintiff was pursuing *Monell* discovery.

1       And I know that that argument wasn't received by Your Honor  
2       and I understand that.

3                   We did not make the argument that other stuff, you  
4       know, prior to the incident or even subject matter related was  
5       *Monell* discovery.

6                   In this instance though I think there is a vast  
7       difference in the types of material that we're talking about  
8       and all you need to do to see that is refer to plaintiff's  
9       complaint.

10                  There's an allegation in the complaint, paragraph  
11       101, and it describes these other incidents where it is  
12       alleged that Detective Scarcella partook in some improper  
13       conduct and that there's a direct line from the improper  
14       conduct to the exoneration. That's factually inaccurate, the  
15       first part.

16                  But even if that were true, the way he would proceed  
17       to prove that -- and again this is a paragraph existing in the  
18       complaint within the *Monell* section is to look at those  
19       underlying files and see if through a course of conduct  
20       reflected in those documents, which supervisors knew about  
21       because the question with regard to *Monell* is noted, and  
22       whether they ratified the behavior.

23                  From those files you could make the argument that  
24       the supervisors, the policy makers knew what he was doing. He  
25       was a rogue detective running wild and there's your *Monell*

1 claim.

2 That is the -- if these materials are relevant in  
3 any respect it's that and *Monell* discovery has been stipulated  
4 to be bifurcated and we think it's improper.

5 If the court were to hear that argument and find it  
6 unconvincing, I think as to just relevance as to the files  
7 themselves as it relates to Detective Scarcella and the impact  
8 it would have in this case otherwise, plaintiff has not met  
9 their burden in proving the relevance of this material, both  
10 with regard to the particularity of specificity of what it is  
11 they're actually requesting, putting specific cases before the  
12 parties in this litigation so we could actually have a better  
13 understanding of what the types of allegations are being  
14 bandied about.

15 Plaintiff seems to be operating on a theory that  
16 Detective Scarcella plus exonerations means he must have done  
17 something wrong. We have access to those files. And I don't  
18 think the rules of discovery or the case law in this area  
19 would support that.

20 And to the extent that he's arguing that this  
21 material is relevant with regard to 404(b) grounds, or  
22 impeachment evidence, again, we would be looking to files  
23 concerning criminal acts, homicides that had nothing to do  
24 with the plaintiffs in this case that -- where Detective  
25 Scarcella, he may have been the primary detective. He may

1 have been a supporting detective. His involvement in the  
2 specific matters may vary from case to case.

3 This isn't a case -- and I'll make a comparison that  
4 some might be familiar with with regard to the allegations in  
5 the news about Scarcella. The notion that he used the same  
6 homeless eyewitness in multiple cases.

7 This is not a Theresa Gomez case. There is no  
8 allegation that he used an improper witness. The allegations  
9 that Nathaniel Cash's girlfriend, who had spent the night at  
10 his house and either was at the scene of the homicide or went  
11 to the store and came back, he was killed.

12 This individual, Ms. Jewel Smith, had a history with  
13 Derrick Hamilton. Grew up in the same projects. This is not  
14 a case where we're pulling somebody else and you can kind of  
15 tie -- like all three of the Gomez cases go together so you  
16 should have discovery across those types of cases. That's not  
17 what we have here.

18 Even if the court were not persuaded by that, I  
19 think the 160.50 issue raises an issue. Beyond that, we then  
20 have to discuss the burden in this case with regard to what  
21 these files actually entail, and what we can use as a good  
22 reference point and again, also that we haven't seen them and  
23 the D.A. can't look at them because they are sealed in the  
24 Derrick Hamilton matter.

25 What the files will show is that the CRU -- will

1 likely show. Again, I don't know -- the CRU looked at the  
2 underlying report. They spoke with all the witnesses again.  
3 They looked at the original investigatory steps taken by  
4 police and the district attorney. They spoke to eyewitnesses.  
5 They spoke to eyewitnesses who were fearful for their life.

6 They did a lot of case work that likely the majority  
7 didn't actually deal with the detective on the case and  
8 they've made some conclusions.

9 And those files are large. They are dated and  
10 they're being expensed both on the corralling and reviewing  
11 aspect and a serious expense with -- and essentially you'd  
12 have to be pulling somebody away from the Conviction Review  
13 Unit, which was created very recently for a specific purpose,  
14 to have them review these types of files just so that they can  
15 be put into a litigation.

16 And you have to also question whether the fact that  
17 this material becomes discoverable in a case like this makes  
18 the Conviction Review Unit have a more challenging time doing  
19 their job going forward, speaking to other witnesses. Again,  
20 speaking to witnesses who are fearful for their life because a  
21 lot of these cases involve allegations of notorious drug  
22 runners, essentially.

23 THE COURT: So are there reports that may have lots  
24 of attachments, but is there some document that has however  
25 many pages within attachments and other material, but the

1 report has some sort of narrative summary of the discovery for  
2 the case and the ultimate decision?

3 I mean, I don't know what these -- I don't know  
4 what's been produced in terms of I haven't seen it in this  
5 case, but can you tell me more about what there is, the  
6 question being much like the indices, you know, is there a  
7 place to start? Because you're sort of dealing with your  
8 grounds backwards.

9 You're starting to say that it would be an enormous  
10 project and potentially take people who are working on  
11 something -- on matters that -- I suppose the implication is  
12 that that may relate to the release of other individuals or at  
13 least clearing the record as to whether convictions are valid  
14 or not, and then have them deal with this case.

15 So in terms of summary materials, is there some kind  
16 of summary report for each of the cases that led to an  
17 exoneration?

18 MR. EDELSTEIN: Your Honor, if I may speak to that  
19 with regard to this case, the CRU prepares -- in this case  
20 prepared a final report of its investigation which detailed  
21 many of the -- many or possibly all of interviews that it did,  
22 the investigative steps that it took and then it generally  
23 redacts the exact reasons for its exoneration, but it does  
24 summarize the supporting evidence.

25 THE COURT: Okay. And does that kind of a report

1 exist for each of the nine cases that you said that there was  
2 an exoneration in?

3 MR. LOPERFIDO: I think we can only speculate at  
4 this point because those matters are sealed and I could  
5 perhaps confer with the client on whether as a practice that  
6 is something that they do in the Conviction Review Unit.

7 But I can't say with any specificity. Each case is  
8 different. And so the answer to your question I don't know.

9 THE COURT: Okay. And then for each side, I mean,  
10 why isn't this the kind of material that would lead to an  
11 examination about truthfulness or untruthfulness, given what  
12 is suspected that these materials included?

13 I mean, I don't know about any particular case. If  
14 Detective Scarella was a key player, an ancillary player,  
15 someone who did -- I don't know what happened, but it would  
16 seem like this would be potentially -- well, backing up.

17 Assuming that that is the kind of issue that's  
18 discussed in these reports, that the material might be the  
19 kind of material that would allow on cross examination at  
20 trial for the plaintiff to inquire as to the witnesses  
21 truthfulness or untruthfulness. And so you wouldn't introduce  
22 the material, but you could ask about it.

23 And if you're -- hypothetically -- and I really  
24 don't -- I don't know the particular ones he's looking at, but  
25 if they said things about what Detective Scarella had done

1 and it went to this concern, then wouldn't that be a  
2 legitimate subject of cross examination?

3 I mean, from the plaintiff's perspective, and I  
4 don't have a view as to what happened here or not.

5 But the plaintiff would say didn't you work on X  
6 case. You worked on X case, correct? And you were the lead  
7 detective. Correct. And you interviewed X and the unit found  
8 Y. And then just keep doing that over and over again. I  
9 mean, obviously, that's the trial judge's decision whether  
10 that could actually happen or not.

11 So first you have the objection is it's a burden.  
12 So there's a question is there a narrative report that would  
13 be a summary that would decide -- you know, help narrow the  
14 effort.

15 Then you have the argument that this is *Monell*  
16 discovery. I don't think it's *Monell* discovery because I think  
17 at a minimum it goes to impeachment, depending what's in these  
18 files.

19 So that relates to this particular case, plus you  
20 don't have enough information, but plaintiff's point was that  
21 these exonerations he's talking about bracket what went on  
22 here.

23 So one could think that there would be other  
24 theories to explore particularly related to this defendant and  
25 then -- individual defendant -- and then you have the 160.50

1 issue, which I don't know which way I would rule on that  
2 because I don't think it's necessary at this moment to do that  
3 if the plaintiff thinks you can get the releases.

4 And then to the point there was some concern that  
5 there may be issues addressed in those reports that might open  
6 non-parties up to problems because of -- I don't know --  
7 they're concerned about what the -- people who were the  
8 defendants in the cases that they were addressing, you know, I  
9 would think you could address that through some kind of  
10 redaction of maybe those particularly sensitive issues.

11 I mean, that you could talk about when you've  
12 actually seen these reports and figure out what the right way  
13 to do this is.

14 So let me go back to the plaintiff and how likely or  
15 what would your proposed schedule be that you could try to get  
16 160.50 releases for the seemingly nine cases that you're  
17 interested in.

18 MR. EDELSTEIN: I know with respect to one of the  
19 cases the defendant is deceased.

20 But there were -- he was prosecuted jointly with  
21 another person who is alive.

22 I would guess that we would be able to get  
23 authorizations within 30 days for at least the significant  
24 majority of these cases.

25 THE COURT: All right. So I think that's where you

1 should start.

2                   And on the defendant's side you should -- I guess,  
3 the plaintiff you should let the defendants know which of the  
4 individuals you are able to get the 160.50 releases for and,  
5 obviously, get them and to the extent there are these kind of  
6 summary reports in those files and the plaintiffs -- sorry.  
7 The plaintiffs are able -- the plaintiff is able to get those  
8 releases, then produce those reports.

9                   If there are safety related concerns, you can have  
10 whatever discussions you all need to have about them and  
11 redact the potentially, I don't know, risk creating  
12 information that's in there.

13                   But we'll have to see how that plays out. Maybe  
14 plaintiff comes back and says I need that information. I  
15 don't know.

16                   So I don't know A, whether these reports exist. B,  
17 what's in this. E, if what's in them connects Detective  
18 Scarella in a way that would lead it to be relevant  
19 information.

20                   But if the people who are the subject of the reports  
21 are willing to have those reports shared, and potentially the  
22 underlying files shared, the it seems like this is certainly  
23 something that can happen and then as to people who don't want  
24 to sign their 160.50's, I think it would have a bit of a split  
25 in that one -- at that point, hopefully, we'll have more

1 information about what the reports are and see if this is  
2 actually fertile area of discovery, or futile, or too  
3 burdensome, or whatever the objection would be, and we can  
4 deal with the 160.50 question then.

5 So this is -- like the CPI and the questions about  
6 the underlying materials a process, again, to make this  
7 manageable but thorough.

8 So it's the 19th say plaintiff try to get the -- or  
9 close 160.50's by May 20th. Given them over to defendant's  
10 counsel and then you see what you have. And then within the  
11 month produce them and with the redactions, if you need the  
12 redactions and then we'll see where that leaves us off.

13 And then the question of whether you need the  
14 underlying files, put it off for another day until you see  
15 what the summaries say.

16 MR. LOPERFIDO: Your Honor, if I could just comment  
17 on that briefly.

18 THE COURT: Sure.

19 MR. LOPERFIDO: This is Jeff Loperfido again.

20 I think if plaintiff is able to provide 160.50's  
21 that would be helpful in us all having a better understanding  
22 of the files.

23 I just want to make clear for the record the report  
24 itself, which is the most pivotal piece of work that that the  
25 Conviction Review Unit does as an entity for which it was

1       created, is going to be the most hotly contested item in the  
2       report.

3               Now if plaintiff is seeking perhaps the underlying  
4       NYPD investigative files and he has a 160.50 that's a  
5       discussion we could actually have.

6               But with regard to the -- it seems to suggest that  
7       you were planning to issue an order producing the reports and  
8       I think there is going to be, in addition to the objections  
9       I've named and they're all outlined in our discovery  
10      responses, there's likely going to be deliberative process  
11      privileges --

12              THE COURT: Well, why didn't you raise that -- I  
13        just asked you what your objections were. You said *Monell*, you  
14        said the 160.50. You said burden. You didn't talk about some  
15        alleged privilege and what was discussed along the way was  
16        that -- at least this is I think from plaintiffs, description  
17        of the report in this case is that the recommendation  
18        paragraph, which would be I assume it's the deliberative  
19        decision, was redacted.

20              So I mean, here you are. We've already gone through  
21        this for the last 15 minutes and now you're telling me you  
22        have other privilege objections to this?

23              MR. LOPERFIDO: Yes, Your Honor. And I apologize if  
24        it's -- I guess, I didn't understand. I was naming them all  
25        at that opportunity, but I was identifying them in the order

1       in which -- you know, if you determine that they were *Monell*  
2       discovery, then we're not even having this discussion. If you  
3       determine they're not relevant, we're not having this  
4       discussion.

5           We had a little back and forth and I think you  
6       commented that you believed that you could see a scenario  
7       where information within these reports could speak to the  
8       credibility of Detective Scarcella.

9           If we get to the point where production is being  
10       ordered of these files, there's going to be attorney work  
11       product, there's going to be deliberative process and we'll  
12       have to -- again, we can't look at them but we'll have to --  
13       until the 160.50 is provided, or until there's a court order  
14       unsealing them, and then we'll have to assert those redactions  
15       where appropriate.

16           MR. EDELSTEIN: Your Honor, again, if I may speak to  
17       that, the way the exoneration --

18           MR. LOPERFIDO: Mr. Edelstein -- and there's perhaps  
19       privacy interest and there are many, many objections  
20       potentially, but with regard to Derrick Hamilton where we  
21       can kind of look to an exemplar as instructing us on what we  
22       might find in the future documents, there were redactions made  
23       as to the privacy of non-parties, there was deliberative  
24       process. There was work product. There were things of that  
25       nature. I fully expect that to be the case in any other file,

1 especially with regard to the primary report prepared by this  
2 unit.

3 MR. SIGNORELLI: Your Honor, this is Richard  
4 Signorelli. Just for the record I just want to note that on  
5 behalf of Detective Scarcella, we fully agree to adopt all the  
6 arguments of the City with regard to this particular issue.

7 THE COURT: All right. Well, the way we're going to  
8 leave it is you need to provide those reports and -- those  
9 reports by -- assuming the plaintiff gets releases for the  
10 cases in which he gets the releases by June -- and he's going  
11 to provide them to you by May 20th, you need to provide the  
12 reports to him by June 17th.

13 You can make the redactions that you think are  
14 appropriate and provide a privilege log and we can argue about  
15 it then. But you have to not be over inclusive and actually  
16 have a well grounded basis for making these objections.

17 Now there's this other possibility, which is if you  
18 don't want to turn over the reports and you want to go down  
19 the path of producing the whole file, we can hear from  
20 plaintiff on that topic.

21 But it seems to me the report appears to have the  
22 summary of the investigations are appropriate. And they were  
23 turned over -- like it was turned over in this case, it sounds  
24 like, so it seems that the materials have gone beyond the  
25 D.A.'s office and the NYPD.

1                   MR. LOPERFIDO: Your Honor, not to interrupt, but  
2                   Derrick Hamilton signed a 160.50 release in this case and the  
3                   basis for his exoneration was a recommendation from the  
4                   Conviction Review Unit to have them released.

5                   THE COURT: Yes, but --

6                   MR. LOPERFIDO: I --

7                   THE COURT: All right. But we're proceeding here to  
8                   talk about the files for which the plaintiff is able to get  
9                   160.50 releases.

10                  So to the extent there are these privilege claims,  
11                  I'm not saying you can't raise them, although I'm not thrilled  
12                  about the order in which you raise them here because I asked  
13                  if there was anything else.

14                  So you can produce the report with redactions, with  
15                  the privilege log and we can have the more informed discussion  
16                  about what should be produced, but obviously something to  
17                  consider in suggesting that there are privileges, which there  
18                  may be. I don't know. I haven't seen it. Don't know the  
19                  context of these materials.

20                  The question is going to be if the materials have  
21                  been shared beyond the NYPD and the D.A.'s office, then are  
22                  they still privileged.

23                  But I think -- again, like the CCRB, the IAB files,  
24                  et cetera and dealing with the indices, you need to get this  
25                  moving. Find out what there is. See what the materials

1 involve, if they're at all relevant here, and figure out if  
2 anybody's got any other rights that should be protected.

3 And so far I'm open to hearing if you have a better  
4 suggestion, but I'm not hearing it, so let's start with these  
5 160.50's and you get those materials out and we'll see where  
6 to go.

7 Obviously, if the plaintiff is thinking that you  
8 want to see the files and -- rather than the reports, or you  
9 want to see the files as well as the report, there will also  
10 be that question, especially if the 160.50's are signed.

11 And so it would be helpful for the next time we have  
12 a discussion about all of this for the defendants to have some  
13 idea of what the scope of the materials are.

14 And it may be these files are not huge. It may be  
15 that they're huge. It may be that they're lost in storage. I  
16 don't know.

17 But you know start to get a handle on what's going  
18 on and probably what would be helpful is after this call for  
19 you all to talk and plaintiff to make clear those folks who  
20 you think you're asking for the reports about and the records  
21 about.

22 So let's start there and then get this moving. You  
23 get more information. Figure out with more refinement what  
24 your respective positions are and then go from there. All  
25 right.

1                   So that's the one that was on the list underneath  
2 the personnel files, which we already talked about.

3                   And then now there's this next issue about Jewel  
4 Smith and Alphonso Dixon and then you tabled it. So is that  
5 still tabled or what's going on there?

6                   MR. EDELSTEIN: It's still tabled. I anticipate  
7 that, you know, the depositions of Detective Scarella and  
8 Detective White may very well provide us with all of the  
9 information that we need or are looking for on that issue.

10                  So at the moment I am tabling the request for  
11 documents on that issue in light of the objections of the  
12 parties in the interest of things getting moving faster.

13                  However, if it turns out that the depositions of  
14 Detective Scarella and White do not result in disclosure on  
15 those issues. I am reserving my right.

16                  THE COURT: All right. Are those two depositions  
17 scheduled yet?

18                  MR. EDELSTEIN: There are no depositions scheduled  
19 at the moment in light of the fact the document discover is  
20 still ongoing. I would certainly anticipate that the plaintiff  
21 will be deposed first.

22                  THE COURT: Okay. All right. So we're just putting  
23 that on hold. Smith and Dixon.

24                  All right. New Haven. That's the next issue,  
25 right?

1                   MR. LOPERFIDO: Your Honor, can I just -- can we  
2 revisit briefly the CRU and NYPD underlying files issue?

3                   And I just want to note for the record, you know,  
4 Mr. Edelstein has known about this sealing issue for a while.

5                   Had he proposed 160.50's, the ability to obtain  
6 160.50 releases from these individuals, we could have had a  
7 much more informed conversation today.

8                   I understood this to be a joint status conference  
9 and had he moved to compel these specific files and stated  
10 with the necessary precision the specific items that he was  
11 seeking, again, we could have had a better exchange as to what  
12 our client's position is with regard to these files, with  
13 respect to specific individuals and we could have outlined in  
14 very clear and convincing fashion supported by case law the  
15 bases for our various objections and privileges.

16                   I feel a little caught off guard at the -- that  
17 there's now going to be an order on the docket suggesting the  
18 production of these files prior to counsel obtaining 160.50's  
19 and suggesting that this is a proper area of discovery for  
20 wrongful conviction cases going forward.

21                   I think we would say it is not. I understand Your  
22 Honor's position, but I would just ask perhaps we could do  
23 this sequentially and see if -- what plaintiff could actually  
24 produce with regard to a 160.50 and perhaps we can talk about  
25 a solution that doesn't require current state of affairs.

1                   THE COURT: That's what I said.

2                   MR. EDELSTEIN: Your Honor, Jonathan Edelstein.

3                   THE COURT: No, no, no, no. Hold on. What I said  
4                   was plaintiff is going to try to get the 160.50's. If he can  
5                   get the 160.50's, he's going to give them to defendant's  
6                   counsel. The defendant's counsel can look at those files.

7                   I suggested based on the conversation and  
8                   information you've given me, which in part was the information  
9                   about what exists in Mr. Hamilton's file, which is look at the  
10                  file. You'll have the ones -- this is for defendant's  
11                  counsel. Look at it.

12                  It seems like the narrowest but potentially most  
13                  thorough document that would be included in the file would be  
14                  the report that led to the exoneration and exchange that. But  
15                  you can make whatever privileged redactions you think are  
16                  appropriate.

17                  I'm assuming, based on this conversation, I'm going  
18                  to hear from you all again about that, but I'm also saying  
19                  that you have to think about this in the context of where  
20                  those materials have already been circulated.

21                  And if the people who are the subject of those  
22                  reports, meaning the particular individuals who are  
23                  exonerated, are willing to share the materials of Mr.  
24                  Hamilton, then it may be that they need to shared.

25                  So that's not saying one way or the other that these

1 are materials that do need to be shared in exoneration cases.  
2 They may well be. But without knowing what's in them, it's  
3 very hard to guess.

4                   And if we can circumvent the issue of needing to  
5 decide whether this particular case that state sealing statute  
6 and it's application in this case doesn't trump the federal  
7 discovery interests, then that's probably the most efficient  
8 and effective way to get some handle on what the materials  
9 are, whether they deal with Detective Scarella in any detail.  
10 Whether there really are privileges that prevent the  
11 disclosure, et cetera.

12                  I did not say that you can't raise these issues, but  
13 I want you to really think about them given the history of  
14 these cases.

15                  So let's get going and at least have some file other  
16 than Mr. Hamilton's to look at and given that plaintiff's  
17 counsel thinks it's something that he can facilitate, then  
18 that is probably the best way to do it.

19                  So plaintiff, you've got a month to try to find  
20 these documents, otherwise we're going to have to deal with  
21 this through a different tact.

22                  That's not to say that you won't have to produce  
23 these reports down the line. It's not to say you will have to  
24 produce them. I don't know.

25                  But what I do know is that there is a working,

1 possible, practical solution. So let's start with that.

2 All right. So the New Haven defendants and your  
3 issues. That's -- what is it? The fourth full one on page 2  
4 of the letter at 42 on the docket.

5 MR. KARSTEN: Your Honor, this is Scott Karsten.  
6 We've had some discussion with plaintiff's counsel about this  
7 issue and I think that the difficulty that we have and that  
8 we've interposed in our objection is primarily that we are not  
9 and were not in the position to know who might be a  
10 "prospective" witness in the Hamilton criminal case and all  
11 its incarnations.

12 We're working on narrowing that language and I  
13 suspect that there's a known universal potential of people  
14 that we might be able to particularly identify.

15 And if we can do that -- and once we get the court  
16 order required under the erasure statute then we can proceed  
17 with responses to those.

18 MR. EDELSTEIN: Your Honor, Jonathan Edelstein for  
19 the plaintiff.

20 The narrowing language that I had actually offered  
21 to the New Haven defendant was to narrow that demand to  
22 involve only documents regarding communications with persons  
23 who were known to the employees of New Haven to be prospective  
24 witnesses.

25 So that -- I think that that would satisfy the issue

1 that Mr. Karsten raised and I do acknowledge that to be an  
2 issue, by limiting the production to people who were known at  
3 the time to be -- by the employees of the City of New Haven to  
4 be prospective witnesses in the case. It won't require any  
5 kind of a fishing expedition on his part.

6 MR. KARSTEN: I still struggle to know what that  
7 means and how you can know that somebody is a prospective  
8 witness.

9 I mean, either they're a list of witnesses that were  
10 from New Haven somewhere or there aren't. And it would be  
11 certainly useful for our purposes to know who those folks  
12 might be. I mean, obviously, there are a couple; Alphonso  
13 Dixon, maybe Maddie Dixon. I don't know. Maybe not Maddie  
14 Dixon.

15 But other people that were prospective witnesses --  
16 you know, Mr. Edelstein is a position to know that better than  
17 we are at this point.

18 MR. EDELSTEIN: Well, we can certainly give some  
19 additional names. Tashanika Watson and Kelly Turner, for  
20 instance but -- and -- but we believe that the police in the  
21 course of their investigating their case may have communicated  
22 with some people we don't know about.

23 And if there are communications between the police  
24 and people who they believe to be prospective witnesses in  
25 the case but were not known to us, I think that that's

1 something that we would be entitled to to see if -- you  
2 know, whether or not anything prevented those witnesses from  
3 coming forward.

4                   But if it would help Mr. Karsten I can certainly  
5 provide a preliminary list of names of people who we know to  
6 be prospective witnesses from New Haven and we just named  
7 four of them. I believe there are a couple of more and I can  
8 give those names to him.

9                   THE COURT: All right. Look. Two things. This  
10 is a telephone conference. You can't start talking because  
11 then you don't know what I'm interested in hearing about,  
12 what I need to hear about. You don't know what the other  
13 people are saying.

14                   You should be having this conversation offline.  
15 It says in your letter that you were working on this. It  
16 seems like you should continue to work on it and if you  
17 reach an absolute impasse, then let me know. But have this  
18 conversation offline.

19                   And I understand from the last time we were on the  
20 phone that there were questions that the New Haven parties  
21 have about what the Connecticut requirements are for  
22 revealing certain materials, and you were going to do  
23 research and figure out where the right place to raise that  
24 issue is. So is there anything else I need to know about  
25 that today?

1 MR. EDELSTEIN: About that issue?

2 MR. KARSTEN: No.

3 MR. EDELSTEIN: Not from the plaintiff's side,  
4 Your Honor.

5 THE COURT: All right.

6 MR. KARSTEN: No, Your Honor. Not from New  
7 Haven's side.

8 THE COURT: All right. So the last item on that  
9 page you're dealing with.

10 And then -- all right.

11 So additional -- any other discovery issues that  
12 are immediately before you all?

13 MR. EDELSTEIN: None from the plaintiff's side,  
14 Your Honor.

15 MR. KARSTEN: Not from New Haven.

16 THE COURT: The City?

17 MR. LOPERFIDO: Nothing from the City. Thank you.

18 THE COURT: All right. So you all are working on  
19 these issues. Get a handle on what the materials look like.  
20 I will talk to my deputy and we'll schedule another follow  
21 up discussion to make sure this is all moving ahead.

22 And I don't need to have a detailed conversation  
23 about this, but is there any possibility of having  
24 settlement discussions in this case?

25 MR. EDELSTEIN: Your Honor --

1 MR. KARSTEN: Not from New Haven, Your Honor.

2 MR. EDELSTEIN: -- I'm not certain. I mean, the  
3 plaintiff has made a demand. We've indicated that the  
4 demand is flexible, especially given the possibility of a  
5 settlement in the state case.

6 At the moment it seems that a settlement in the  
7 state case is likely in the fairly near future. I can't say  
8 it's a hundred percent. I know that there have been serious  
9 and productive discussions and that it has been written up  
10 by the attorney general's office.

11 Our next court date in that is the 24th of May.  
12 I'm hoping that there's some sort of firm offer by then and  
13 possibly even a settlement.

14 At that point we would probably be in a position  
15 to considerably revise our demand of these defendants and  
16 whether we're close enough to the ballpark at this point to  
17 have settlement discussions I think is a matter -- is within  
18 their knowledge.

19 THE COURT: How about for the City?

20 MR. LOPERFIDO: We are in receipt of Mr.  
21 Edelstein's demand and it is quite involved and we're  
22 considering it, but I don't think settlement discussions at  
23 this point in time make sense.

24 THE COURT: Okay. You have multiple options. You  
25 could have a conversation with me. Judge Pohorelsky told me

1 had some time in his schedule and the upside of him over me  
2 is that he has more time, besides whatever you all might  
3 think.

4                   But he has time in his schedule and could have  
5 some longer discussions than either I or other colleagues  
6 might be able to fit in and obviously, there's the court's  
7 mediation -- court annex mediation program which has  
8 experienced mediators and you could look on the court's  
9 website to see if there's anyone who you think might be well  
10 suited to serve as a mediator in the case.

11                  The cost is modest, relative presumably to the  
12 size of this case. And if need be, you could ask that the  
13 fees be waived or reduced. So those are possibilities. You  
14 could do it yourselves or you could have an outside mediator  
15 beyond the court's program work with you. Whatever it is  
16 that you think would help move things forward.

17                  All right. So there'll be a summary of these  
18 orders and there'll also be a date for a follow up  
19 discussion. Okay. That's it. Thank you very much. Have a  
20 good day.

21                  MR. LOPERFIDO: Thank you, Your Honor.

22                  MR. KARSTEN: Thank you, Your Honor.

23                  THE COURT: Bye.

24                  (Proceedings concluded at 1:07 p.m.)

25

1 I, CHRISTINE FIORE, court-approved transcriber and  
2 certified electronic reporter and transcriber, certify that  
3 the foregoing is a correct transcript from the official  
4 electronic sound recording of the proceedings in the above-  
5 entitled matter.

Christie Fiore

April 27, 2016

Christine Fiore, CERT